Office-Supreme Court, U.S.
FILED
MAY 20 1983
ALEXANDER L. STEVAS,
CLERK

No. 82-1482

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

HAROLD L. MYRON,

Petitioner,

v.

TRUST COMPANY BANK LONG-TERM DISABILITY BENEFIT PLAN, TRUST COMPANY BANK and GREAT-WEST LIFE ASSURANCE COMPANY,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENTS TRUST COMPANY BANK AND TRUST COMPANY BANK LONG-TERM DISABILITY BENEFIT PLAN TO PETITION FOR WRIT OF CERTIORARI

A. Felton Jenkins, Jr.
(Counsel of Record)
Charles M. Shaffer, Jr.
R. Marcus Lodge
KING & SPALDING
2500 Trust Company Tower
Atlanta, Georgia 30303
404/572-4600

QUESTION PRESENTED

Did the District Court properly consider extrinsic evidence to identify the written documents containing the terms of the Trust Company Bank Long-Term Disability Benefit Plan?

TABLE OF CONTENTS

	Page
STATEMENT OF THE CASE	2
REASONS WHY THE WRIT SHOULD BE DENIED	8
I. SUMMARY OF ARGUMENT	8
II. ARGUMENT	9
A. ERISA Does Not Require an Integrated Plan Document	9
B. Petitioner Mischaracterizes the District Court's Use of Parol Evidence	11
C. This Case Does Not Present Substantial Unresolved Questions of Federal Law	14
CONCLUSION	16
Appendix Department of Labor Opinion Letter 75-87, dated September 18, 1975	A-1

TABLE OF AUTHORITIES

Cases	Page
Alessi v. Raybestos-Manhattan Inc., 451 U.S. 504, 511 (1981)	10
Brown v. Financial Service Corporation, International, 489 F.2d 144, 149 (5th Cir. 1974)	12
Carolina Metal Products Corp. v. Larson, 389 F.2d 490, 493 (5th Cir. 1968)	13
In re H. Hicks & Son, 82 F.2d 277, 279 (2d Cir. 1936)	12
National Hills Shopping Center, Inc. v. Liberty Mutual Insurance Co., 551 F.2d 655, 657 (5th Cir. 1977)	12
Vanston v. Connecticut General Life Insurance Co., 482 F.2d 337, 340-41 (5th Cir. 1973)	13

Statutes

29 U.S.C. § 1024 (b)(4)	9
Supreme Court Rule 17	8

Miscellaneous

3 A. Corbin, *Corbin on Contracts* § 577 (1960)	12
Department of Labor Opinion Letter, No. 75-87, dated Sept. 18, 1975	10

Restatement (Second) of Contracts §§ 209-214 (1979) 13

No. 82-1482

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

HAROLD L. MYRON,

Petitioner,

v.

TRUST COMPANY BANK LONG-TERM DISABILITY BENEFIT PLAN, TRUST COMPANY BANK AND GREAT-WEST LIFE ASSURANCE COMPANY,[1]

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

---

[1] Trust Company Bank is a wholly owned subsidiary of Trust Company of Georgia. All but one of the affiliates of Trust Company Bank also are wholly owned subsidiaries of Trust Company of Georgia. The sole affiliate that is not wholly owned is The First National Bank of Wayne County (Jesup). *See* Supreme Court Rule 28.1.

BRIEF IN OPPOSITION OF RESPONDENTS TRUST COMPANY BANK AND TRUST COMPANY BANK LONG-TERM DISABILITY BENEFIT PLAN TO PETITION FOR WRIT OF CERTIORARI

The opinion of the District Court and the judgment of the Court of Appeals are reproduced in petitioner's Appendix. These respondents accept petitioner's Statement of Jurisdiction and of the statute involved, with the exception that this case does not involve the Supremacy Clause of the United States Constitution, Article VI, §2.

STATEMENT OF THE CASE

Petitioner fairly sets forth the proceedings in the courts below insofar as they relate to the issues here.[2] Petitioner's statement of facts, however, is misleading and incomplete, and therefore these respondents set forth below their own statement of facts.

The dispute in this case involves the amount of benefits to which petitioner is entitled under a disability benefit plan. Petitioner, a former employee of Trust Company Bank ("Trust Company"), became disabled shortly after Trust Company changed the funding procedure for its employee disability plan. Petitioner and

---

[2] The facts of the case are set forth in detail in the opinion of the district court in petitioner's Appendix. One typographical error appears in the district court opinion. The plaintiff became eligible for and began receiving military retired pay as of August 1, 1973, rather than 1979. [Pet. App. A-4].

Trust Company disagree as to whether the provisions of the plan authorize Trust Company to offset his military retirement pay against the amount of his benefits.

Prior to 1976, Trust Company initiated for its employees a long-term disability benefit plan. From July 15, 1975 through April 30, 1979, the Trust Company Bank Long-Term Disability Benefit Plan ("the Plan") was insured under a policy issued by Northwestern National Life Insurance Company ("Northwestern"). All of the substantive benefit provisions of the Plan and all of the insurance provisions of the insurance policy were set forth in one document ("the Northwestern Document"). Under this funding arrangement, Trust Company funded the payment of Plan benefits by paying insurance premiums to Northwestern. Northwestern, as an insurance company, then processed claims for Plan benefits and paid those claims that satisfied the requirements of the Plan.

In September of 1978, Great-West Life Assurance Company ("Great-West") submitted to Trust Company's insurance consulting firm, Johnson & Higgins of Georgia, Inc. ("Johnson & Higgins") a proposal recommending that the Plan convert from an insured status to a self-funded status, employing Great-West to provide administrative services such as claim processing. The basic provisions of this proposal were eventually accepted by Trust Company as of May 1, 1979. On that date, Trust Company contracted with Great-West to convert the funding of the Plan from an insured to a self-funded status, with claims adjudication and fund management services to be provided by Great-West.

The substantive benefit provisions of the Plan continued to be set forth in the Northwestern Document. In connection with the conversion of the Plan from one insured by Northwestern to one that was self-funded by Trust Company with administrative services to be provided by Great-West, Great-West undertook to prepare a revised plan document, reflecting the changes in funding and administration. At the time of the conversion, a document entitled "Application for Group Insurance" ("the Application") was submitted by Trust Company to Great-West. The Application consisted of several Great-West forms, to which excerpts from the Northwestern Document and the Plan's summary plan description were attached.

Three parties were involved in converting the Plan from an insured status to a self-funded status: Trust Company, Johnson & Higgins, and Great-West. The individuals who were responsible on behalf of these parties for handling the conversion swore by affidavit that the parties intended for the substantive benefit provisions of the Plan to remain unchanged, except for two slight liberalizations not applicable to petitioner.[3] This testimony was not rebutted.

After the conversion of the Plan from an insured status to a self-funded status, Great-West produced several drafts in an effort to restate accurately in one document the Plan's unchanged substantive benefit

---

[3] This testimony also is supported by the deposition testimony of the Great-West claims manager responsible for processing petitioner's claim, who testified that she was informed at the time of the conversion that the terms of the Plan were to remain unchanged.

provisions and the new funding and administrative arrangement. These drafts were not approved or executed by Trust Company.

Petitioner retired from the United States Army as a full colonel in June 1973 after thirty years service. At that time, he became eligible for and began receiving military retirement pay. From July 1973 through August 1, 1979, petitioner was an employee of Trust Company. Three months after the change in funding, petitioner retired from Trust Company due to total and permanent disability effective August 1, 1979.[4] At the time of his retirement, petitioner was advised by Trust Company that his benefits would be reduced by the amount of his military retirement pay.

After receiving short-term benefits for the six-month period provided in the Plan, petitioner submitted a claim for long-term benefits under the Plan to Great-West. The claims manager who reviewed his claim testified that she made an error in calculating the amount of his benefits, and, as a result, petitioner's military retirement pay was not deducted from his monthly benefit. This mistake was detected by Trust Company, which informed both Great-West and petitioner of the error.

Through his attorney, petitioner subsequently requested a copy of the Plan from Trust Company.

---

[4] Petitioner also became eligible by reason of his disability to receive 100 per cent service-connected Veterans Administration disability payments. As of March 31, 1981, petitioner was receiving VA disability, social security disability, and military retirement pay totaling at least $3,875 per month or at least $46,500 per year.

Trust Company responded by furnishing the petitioner with a copy of the Northwestern Document, which Trust Company then considered to be the Plan document.[5] During the course of the litigation, petitioner also was furnished with a copy of the Application.

The substantive benefit provisions of the Plan, as set forth in the Northwestern Document, provide that an employee who is eligible to receive long-term disability income benefits shall have offset against those benefits certain "Income From Other Sources." "Income From Other Sources" is a defined term, which includes:

> (c) Any benefits the Insured is eligible to receive from a retirement plan, pension plan or any other similar plan for which the Insured's past or present employer has directly or indirectly sponsored, or for which such employer has paid any part of the cost or has made a payroll deduction. [Pet. App. A-8].

While the page of the Northwestern Document containing this provision was not attached to the copy of the Application contained in the Record, the Application does contain references to "Income from Other Sources", and Trust Company and Great-West at all times intended the offset provisions to remain in force.

Petitioner contended below that the quoted language did not encompass military retirement pay. He also contended that the operative plan document was not the Northwestern Document, but rather that his

---

[5] Trust Company maintained the position that the Northwestern Document was the Plan document throughout the litigation.

entitlement to benefits was governed solely by the Application.

The respondents contended, and the district court found, that the calculation of petitioner's benefits is governed by the section of the Northwestern Document quoted above, and that petitioner's military retirement pay is "Income From Other Sources" as defined in subparagraph (c) of that section. Accordingly, the district court granted summary judgment to Trust Company, the Plan, and Great-West. The court of appeals affirmed per curiam without written opinion.

REASONS WHY THE WRIT SHOULD BE DENIED

I. SUMMARY OF ARGUMENT

Petitioner inaccurately characterizes the issue presented in this case as whether the Georgia parol evidence rule supersedes the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1001, *et seq.*). In fact, the question before the district court was to identify the documents that constituted the Plan, and then to interpret those documents. The court in its thoughtful and detailed opinion did just that.

ERISA does not require that all terms of a plan be contained in a single integrated document. In fact, certain provisions of the Act contemplate that a plan's terms can be provided in multiple documents.

The district court did not modify the terms of the written plan by parol evidence. Rather, the court merely referred to extrinsic evidence to determine which documents constituted the Plan. Having made that determination, the court looked solely to the writings to decide petitioner's entitlement to benefits.

This case does not present questions satisfying the criteria of Supreme Court Rule 17. It is fact-specific, and no important questions of federal law are raised. The district court merely applied well-settled rules of statutory and contract interpretation to determine which documents under these circumstances constituted the Plan and defined petitioner's benefits.

II. ARGUMENT

A. ERISA Does Not Require a Single Integrated Plan Document.

Petitioner's argument is based upon the ERISA requirement that a plan be maintained pursuant to a written instrument and contain certain minimum elements. Petitioner here attempts to expand these requirements far beyond the statutory language. He incorrectly attempts to convert the minimum requirements of ERISA into a very different proposition: that a document (the Application) that happens to contain four of the elements thereby becomes the plan document. Moreover, petitioner contends that ERISA automatically converts such a document, whatever it may have been intended to be, into a totally integrated instrument, so that no other documents may be consulted or considered to define the terms of an employee benefit plan. The statute does not support such a rigid and distorted interpretation.

Petitioner points to no provision of ERISA that supports his extraordinary proposition that a document not intended by any of the parties to reflect the Plan contains *all* of the terms of the Plan. ERISA does not establish any specific requirement as to the formal nature of the documents pursuant to which a plan is to be maintained, and it does not impose any formalities or any requirements contrary to the district court's ultimate resolution of this case. To the contrary, some portions of ERISA anticipate that the plan "instrument" may consist of several documents. *See, e.g.*, 29 U.S.C. § 1024(b)(4) (administrator must supply "other *instruments* under which the plan is established or op-

erated.") (emphasis added.)[6] ERISA establishes a regulatory framework and specifies certain minimum requirements. It does not, however, dictate the formalities petitioner seeks to impose.

The petitioner's argument that the district court's opinion is in conflict with ERISA ignores the analysis performed by the court. The district court did not interpret a plan with terms partially in writing and partially in parol. The district court concluded that this Plan, insofar as it affects the petitioner, is maintained pursuant to at least two written documents: the Application and the Northwestern Document. Those documents, taken together, provide a full and complete explanation of the Plan, and, taken together, they fully comply with ERISA requirements.

Petitioner's argument is premised on a false assumption; *i.e.*, that, under ERISA, the Application is the only document that can and does contain the terms of the Plan. This assumption ignores the general structure of the Act. ERISA establishes certain minimum restrictions and standards, but it leaves the remaining details of individual plans to the private parties. *Cf. Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 511 (1981) (In context of vested pension benefits, "[t]hat the private parties, not the Government, control the level of benefits is clear from the statutory language defining nonforfeitable rights as well as from other

---

[6] Petitioner himself quotes portions of the legislative history referring to plan "documents and instruments." *See* Petition at 14 n.5, 15. *See also* Department of Labor Opinion Letter, No. 75-87, dated Sept. 18, 1975 (Section 1102(a)(1) does not specify what formality is necessary in the establishment of the written instrument; cross-references to other documents are permissible). [A-1].

portions of ERISA."). Among the formalities left to the parties is the structure of the plan documents. ERISA does not require a single, integrated document, and the district court's opinion is not in conflict with ERISA.

B. Petitioner Mischaracterizes the District Court's Use of Parol Evidence

Petitioner asserts that the district court improperly applied parol evidence to modify the terms of the Plan. The district court did no such thing. In fact, the district court properly used extrinsic evidence to determine under what written documents the Plan was established and maintained. Having done that, the court then looked at those written documents to determine the benefits provided petitioner under the Plan. Such an application of extrinsic evidence in no way violates the parol evidence rule as it universally is articulated.

The district court's use of extrinsic evidence is supported by the customary rules of parol evidence and contract interpretation. The district court quite properly examined all of the evidence to determine the intention of the parties as to what documents constituted the Plan. Petitioner's effort to bar this evidence by the misapplication of the parol evidence rule fails to recognize both the purpose and the substance of that rule. The parol evidence rule does *not* bar the district court's use of extrinsic evidence to determine what documents the parties intended to be the manifestation of their agreement. As Judge Learned Hand once explained:

> [A] writing is conclusive only so far as the parties intend it to be the authoritative memorial of the transaction. Whatever the presumptions, their actual understanding may always be shown except in so far as expressly or implicitly they have agreed that the writing alone shall control.

In re H. Hicks & Son, 82 F.2d 277, 279 (2d Cir. 1936).

Before the parol evidence rule can operate to bar evidence of the intention of the parties,

> the first question is whether the writing fulfills this function [to state fully the agreement of the parties] so as to be an integration of the parties understanding. . . . To answer this question a court should consider the writing as well as the circumstances surrounding its execution, . . . and parol and extrinsic evidence may be used in making this determination."

Brown v. Financial Service Corporation, International, 489 F.2d 144, 149 (5th Cir. 1974) (citations omitted). *See also* 3 A. Corbin, *Corbin on Contracts* § 577 (1960).

Petitioner attempts to give the Application a status that none of the parties who created that document intended. This attempt totally ignores the established rule of construction of contracts, which provides a useful analogy. "[C]onstruction of insurance contracts begins with the premise that a policy must 'be construed so as to carry out the true intention of the parties. *All other rules of contract interpretation and construction are subservient to that principle . . .*'" *National*

Hills Shopping Center, Inc. v. Liberty Mutual Insurance Co., 551 F.2d 655, 657 (5th Cir. 1977) (citations omitted) (emphasis added). "[N]o rule bars 'parol evidence' or any other relevant evidence for the purpose of determining whether the parties have agreed upon a writing as a complete and accurate statement of what is agreed upon between them." *Carolina Metal Products Corp. v. Larson*, 389 F.2d 490, 493 (5th Cir. 1968). *See Vanston v. Connecticut General Life Insurance Co.*, 482 F.2d 337, 340-41 (5th Cir. 1973).

Petitioner's assertion that the district court applied the parol evidence rule of Georgia to supersede ERISA is inaccurate and misleading.[7] The use of extrinsic evidence to determine what documents constitute the entire agreement between the parties is a standard principle of both federal and state law, and the district court cited both federal and state cases in support of its decision. [Pet. App. A-24-27]. Petitioner has pointed to no conflicting federal decisions, nor has he identified any statutory provision in ERISA that suggests that well-settled and well-accepted principles of contract interpretation should not apply to the construction of the written provisions of employee benefit plans. *See* Restatement (Second) of Contracts §§ 209-214 (1979).

Despite his characterization of the question presented, petitioner does not seek to show that the

---

[7] Indeed, petitioner argued below, and suggests here at p. 16 n.7 of the Petition, that the Georgia parol evidence rule applied to his case and barred the evidence of the parties' intention. In addition, petitioner contends that "the permissible use of parol evidence . . . is much more limited in Georgia than in most states." [Petition at 23].

Georgia parol evidence rule is in conflict with ERISA, because the parol evidence rule is inapplicable to this case under any articulation of the rule. Rather, petitioner seeks to create a new exclusionary rule that goes far beyond the parol evidence rule.[8]

C. This Case Does Not Present Substantial Unresolved Questions of Federal Law

This case presents narrow and fact-specific issues. The district court was presented with a relatively routine question of identifying operative documents and then interpreting those documents in order to determine petitioner's benefits. Its decision, particularly in light of the unique facts, raises no serious or novel federal questions. In making its determination, the court followed well-established rules of statutory and contract interpretation.

Petitioner argues that ERISA, by operation of law, somehow converts a document that happens to contain four of the minimum informational requirements set forth in a single section of the Act into a fully integrated and complete record of the parties' intention. Moreover, he seeks to exclude unrebutted evidence that none of the parties had any such intention.

The district court's use of extrinsic evidence to identify the applicable governing documents was not in conflict with the spirit or the letter of ERISA. No fed-

---

[8] In this context, parol evidence always is necessary, at least to identify the plan document. At a minimum, even when the applicable document is not in dispute, its identification and authentication always would be by reference to extrinsic evidence.

eral policy is contravened by an accurate determination of the governing plan documents, all of which were in writing. As noted, both the statute and the legislative history clearly contemplate that an ERISA plan can consist of more than a single document. The federal interest is best served by avoiding the creation of overly technical rules that can turn appropriate and authorized acts into "technical" violations, thereby creating unintended windfall benefits to otherwise ineligible claimants. The orderly administration of ERISA requires that the courts be free to utilize established rules of construction to identify and interpret ERISA plan documents. Any other rule would create confusion and not serve any countervailing federal interests.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

A. Felton Jenkins, Jr.
(Counsel of Record)
Charles M. Shaffer, Jr.
R. Marcus Lodge
KING & SPALDING
2500 Trust Company Tower
Atlanta, Georgia 30303
404/572-4600

Attorneys for Trust Company Bank Long-Term Disability Benefit Plan and Trust Company Bank

APPENDIX A-1

P/OPINION 75-87

402

September 18, 1975

Gentlemen:

This is in response to your letter dated June 3, 1975, to the Secretary of Labor in which you ask whether an enclosed written instrument is sufficient to comply with the Employee Retirement Income Security Act of 1974 (ERISA). You also ask how to obtain any rules and regulations, including reporting forms, adopted under the Act.

Regarding the written instruments, it appears that you are asking whether it satisfies the requirement of ERISA section 402(a)(1) that an employee benefit plan be established and maintained pursuant to a written instrument. This section of the Act does not specify who must establish the written instrument and what formality is necessary in its establishment. However, section 402 says that "Such instrument shall provide for one or more named fiduciaries who jointly or severally shall have authority to control and manage the operation and administration of the plan."

Also, the Conference Report on the Act says, on page 297, the following:

> A written plan is to be required in order that every employee may, on examining the plan documents, determine exactly what his rights and obligations are under the plan. Also, a written plan is required so the employees may know who is responsible for

operating the plan. Therefore, the plan document is to provide for the "named fiduciaries" who have authority to control and manage the plan operations and administration.

Based on the above references to section 402 and the Conference Report, a written instrument under section 402 must be established by a person or entity which has authority to designate a "named fiduciary" and to describe the rights and obligations of persons covered by the plan. A cross-reference, or incorporation by reference, to another plan document would be permissible if the other document serves to fulfill the purposes of section 402(a)(1). For example, where rights to plan benefits are governed by the terms of an insurance contract, a reference to the contract would be appropriate.

Regarding the formality in establishing the written instrument, section 402(a)(1) and the Conference Report indicate that the instrument must have the status of an official document of the plan. Execution of the instrument by the plan sponsor, acting as such, would serve this purpose.

Due to the limited resources of this office, we are not able to review plan documents upon request for the purpose of determining whether they meet all requirements of the law. However, I hope that the information provided will be helpful in understanding some basic aspects of the written instrument requirement.

Copies of issuances and reporting forms implementing ERISA may be obtained by contacting the Information Office of the Labor-Management Services Administra-

tion, U. S. Department of Labor, Washington, D. C. 20216 (phone number (202) 523-7408). For your convenience, I am enclosing a copy of recently issued regulations on the reporting and disclosure requirements and a copy of Plan Description Form EBS-1.

Sincerely,